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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF REGULATION

September 9, 1994

BY MESSENGER

Mr. William F. Caton
Federal Communications Commission
1919 M. St., N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Gen. Docket No. 93-253

Dear Mr. Caton:

Columbia PCS, Inc. ("Columbia PCS"), pursuant to 47 C.F.R. Sec. 1.415 and 1.419, Columbia PCS, Inc., hereby submits the attached Opposition to Petition for Reconsideration and Clarification.

Please direct any inquiries concerning this matter to the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "John A. Malloy" followed by a small flourish.

John A. Malloy
Columbia PCS, Inc.
General Counsel
703-518-1407

cc: Rudolfo Lujan Baca, Esq
Lauren J. Belvin, Esq.
The Hon. Andrew C. Barrett
Karen Brinkmann, Esq.
James L. Casserly, Esq.
The Hon. Rachelle B. Chong
Donald Gips, Deputy Chief

The Hon. Reed Hundt
William E. Kennard, Esq.
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The Hon. Susan P. Ness
The Hon. James H. Quello
David R. Siddall, Esq.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

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**OPPOSITION TO COLUMBIA PCS TO PETITION FOR RECONSIDERATION
AND CLARIFICATION**

John A. Malloy
General Counsel

Jill Foerhkolb
Director of Legal Affairs

Columbia PCS, Inc.
201 N. Union St., Suite 410
Alexandria, Virginia 22314

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**OPPOSITION TO COLUMBIA PCS TO PETITION FOR
RECONSIDERATION AND CLARIFICATION**

Columbia PCS, Inc. ("Columbia PCS") hereby opposes the Petitions for Reconsideration of GTE Service Corporation ("GTE") regarding reconsideration of the Commission's adoption of 'entrepreneurial blocks'; Pacific Telecom Cellular, Inc. ("PTC") regarding modification to eligibility requirements; the Small Business PCS Association ("SBPCS") regarding additional limits on C&F block licensees; and the National Association of Black Owned Broadcasters, Inc. ("NABOB") regarding abrogation of the Commission's standard for permissible management contracts.

**I. GTE'S ARGUMENTS AGAINST THE ENTREPRENEURIAL BLOCKS
ARE UNSUPPORTED BY ANY NEW FACTS**

GTE has petitioned the Commission to reconsider adoption of 'entrepreneurial blocks' in bands C&F. In that petition, GTE has attempted to support this request with interpretations of the results of the recent nationwide narrowband PCS auction.

Columbia PCS and GTE can agree on just one point: the recent nationwide narrowband PCS auction reveals much about the prudence of the Commission's adoption of 'entrepreneurial blocks'. However, GTE's conclusion that larger bidding discounts are necessary for designated entities is based upon contorted logic and avoidance of fact. The facts are simple and straightforward. Designated entities in the nationwide narrowband PCS auction received bidding discounts in a general auction. Upon completion of the auction of the 10 national licenses, not one designated entity held a single license. GTE's vision of using bidding discounts to encourage significant investors to "pair up" with designated entities never materialized, resulting in a total shut out for designated entities. The winners were McCaw Cellular Communications, Bell South Wireless, Airtouch Paging and the three largest paging companies in the United States, companies with lower costs of capital and existing revenue streams that could not be overcome by mere bidding discounts.

In adopting 'entrepreneurial blocks' the FCC expressly relied upon extensive evidence establishing that designated entities experience both a lack of access to capital and competitive hurdles created by significantly higher costs of capital. GTE's petition neither addresses nor refutes this record evidence. The results of the nationwide narrowband auction prove that, absent 'entrepreneurial block' protection, dominant communications companies have no real incentive to "pair up" with a new entrant in bands C&F. Therefore, the Commission must reject GTE's petition to reconsider adoption of 'entrepreneurial blocks'.

GTE's arguments aside, the 'entrepreneurial blocks' absolutely address the very problems highlighted by the results of the nationwide narrowband PCS auction. By leveling the playing field and restricting the dominant telecommunications companies to passive investment in bidding entities, the Commission has shifted leverage to the designated entities. If GTE truly desires to "pair up" with a designated entity, it is free to do so, provided that GTE doesn't attempt to control the designated entity. If designated entities need construction expertise or system development from an existing telecommunications company, they can contract for it so long as the contractor does not exert *de facto* control over the licensee. Arguments, express or implied, suggesting that designated entities can only succeed through benevolent partnerships with existing telecommunications companies are false on their face. These alleged benevolent partners are currently profiting from an undue concentration of licenses that Congress sought to redress with the Omnibus Reconciliation Act of 1993. Eliminating the 'entrepreneurial block' protections will only preserve the status quo and ensure that the results of the broadband auctions will mirror those in narrowband PCS. The 'entrepreneurial blocks' are essential if broadband PCS is to engender a more diverse, robust and competitive communications marketplace as mandated by Congress.

II. MODIFICATION TO ELIGIBILITY REQUIREMENTS AND BIDDING DISCOUNTS IS UNWARRANTED

The arguments of Pacific Telecom Cellular, Inc. ("PTC") advocating modification to section 24.709(b)(4) of the Commission's rules are also objectionable. Under the guise of helping designated entities attract capital, PTC actually advocates giving passive investors greater control over qualified entities. Like GTE, PTC can demonstrate its

benevolence for designated entities through a passive investment in such entities. Increasing “investor participation” up to 49.9% equity and 49.9% voting control is nothing more than a ruse to gain additional leverage against designated entities. PTC’s request for modification to section 24.709(b)(4) of the Commission’s rules fails to justify such a significant change that runs counter to both the true interests of designated entities and the purpose of the ‘entrepreneurial blocks’.

Columbia PCS also notes the wide variety of petitions seeking changes to ‘entrepreneurial’ and small business size standards and discount amounts but finds none with sufficient justification to merit a change in the Commission’s rules. In fact, the obvious lack of consensus for even the direction in which changes should be made suggests that the size standards and discount amounts already established by the Commission are fairly applicable to the widest variety of participants. No new or compelling evidence has been introduced that would merit any further modifications to the Commission’s rules.

III. ADDITIONAL LIMITS ON C&F BLOCK LICENSEES THREATEN CHANCES FOR SUCCESS OF ALL NEW ENTRANTS

The Commission’s limitation on any one entity controlling more than 10% of the licenses in bands C&F strikes a fair balance between the need to allow reasonable aggregation strategies while still ensuring a wide dissemination of licenses. The proposal by the Small Business PCS Association (“SBPCS”) to further limit individual licensees to no more than 10% of the available POPs or approximately 25 million POPs per licensee will put these new entrants at an insurmountable disadvantage versus today’s dominant communications companies.

In order to compete successfully against the dominant cellular providers and taking into consideration their imminent extension into PCS Bands A, B, D and E, successful entrepreneurs in Bands C&F will need to form coherent regional cluster strategies. These clusters must come then together into a national alliance with common technology and marketing strategies, including a common brand name. The availability of 986 BTA licenses and the Commission's limitation of 10% of those licenses owned by a single entity ensures ample opportunity for many new entrants. The use of auctions, the capital-intensive nature of PCS technology and the need for a nationwide build-out absolutely require many successful licensees in bands C&F. Restrictions which hinder the ability of entrepreneurs in bands C&F to form nationwide alliances only serve to inhibit successful competition against entrenched cellular and PCS licensees in bands A&B.

A restriction of 25 million POPs per licensee would also have severe practical implications for an entrepreneur's ability to compete effectively against market incumbents. For example, the BTAs in New York and Los Angeles cover approximately 18M POPs and 15M POPs, respectively. The two separate designated entities that would win the NY BTA and LA BTA under SBPCS's approach would be effectively precluded from virtually any meaningful regional cluster strategy, given the size of the adjoining markets. Similar clustering strategies -- which are required to effectively compete against the giant cellular combinations and the larger sized MTA licensees --- would be precluded in the different regions throughout the United States. The Commission accommodated this need by creating the consortium exception for small businesses which

allows formation of a joint venture to bid on multiple markets. Application of the 10% total POP restriction would limit all consortiums to 25 million POPs, a size wholly inadequate to effectively compete against the entrenched cellular carriers and PCS licensees in bands A&B.

IV. MANAGEMENT CONTRACTS MUST NOT BE ALLOWED TO CIRCUMVENT THE PURPOSE OF ENTREPRENEURIAL BLOCKS

The ‘entrepreneurial’ blocks allow new entrants to gain a foothold in the field of communications by shifting leverage from the entrenched communications companies that dominate the field today to eligible entities ready to compete in bands C&F. Under the current FCC rules, the dominant communications companies can only participate in band C&F as passive investors or non-controlling contractors supplying services to eligible entities. Any agreement which creates or transfers *de facto* control to these otherwise ineligible entities circumvents the entire purpose of ‘entrepreneurial blocks’. Arguments, such as those filed by NABOB, which advocate lessening restrictions against unlawful transfers of control puts the success of all new entrants in jeopardy.¹ Columbia PCS does not minimize the expertise and resource needs of designated entities. Rather, we believe the only way to obtain these services and resources from today’s entrenched communications competitors is from a position of strength that has been created by the ‘entrepreneurial blocks’. As such, NABOB’s request that the Commission should not


¹ The Commission, in a separate order in this proceeding, has requested comments on the use of management contracts as they relate to designated entities. Columbia PCS has submitted separate comments advocating additional protections against transfers of *de facto* control to augment the Intermountain Microwave standard adopted by the Commission. See Intermountain Microwave, 2 Rad. Reg. (P&F) 983, 984 (1963).

impose all of the restrictions of the Intermountain Microwave standard should be rejected.

CONCLUSION

Based upon the foregoing, Columbia PCS respectfully requests that the above identified Petitions for Reconsideration be denied.

Respectfully submitted,

By 

John A. Malloy, General Counsel
Jill Foehrkolb, Director of Legal Affairs

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